

APPROVED: Meeting No. 10-95

ATTEST: *Paula S. Jewell*

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
Meeting No. 36-94

December 12, 1994

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland, on December 12, 1994 at 7:34 p.m.

PRESENT

Mayor James F. Coyle

Councilmember Robert E. Dorsey

Councilmember Rose G. Krasnow

Councilmember James T. Marrinan

Councilmember Nina A. Weisbroth

In attendance: City Manager Bruce Romer, City Clerk Paula Jewell and City Attorney Paul Glasgow.

Re: City Manager's Report

1. The General Services Administration on behalf of the Food and Drug Administration announced its selection of the Clarksburg site for the FDA consolidated facility. Mr. Romer said the City had not yet reviewed the report released last week; however, he said it would show the number of concerns expressed by the Mayor and Council, on behalf of the community, which were addressed by GSA staff in making their decision. Staff would continue dialogue and meeting with the owners of the King Farm to review the status of the annexation petition.

2. Dr. Dorothy Height is the featured speaker at the City's 23rd annual celebration honoring Dr. Martin Luther King Jr.'s Birthday on January 16, 1995. Dr. Height is known for her leadership role with the Young Woman's Christian Association and the National

Council of Negro Women. She began her career in the 1930s and has dedicated her entire career to promoting women and civil rights issues and she also worked closely with Dr. King.

3. A dedication is scheduled to take place on December 15, 1994 for Dusty Hill Farm, the farm where the City developed a wetlands mitigation site to satisfy the wetlands mitigation requirements from Wootton Parkway at an off-site location.

Councilmember Weisbroth said that as a resident of Montgomery County, she was pleased FDA decided on the Clarkesburg site; and as a Rockville resident, she was pleased that the Irvington Farm would remain open for the zoning development originally proposed for the site. She said she hoped the Mayor and Council could determine what the implications of FDA's consolidation would mean for Rockville as FDA was leasing a number of buildings in the City and there would be some future impact for the City.

Re: Citizens Forum - This time is set aside to hear from any citizen who wishes to address the Mayor and Council.

1. Douglas Worthing, Member, Sign Review Board spoke in support of the redefinition of the Sign Review Board (SRB) to deal with variances for signs to be placed in the building restriction areas.

2. Gary Klacik, Federal Realty Investment Trust, Owners of Congressional Plaza spoke in support of the ordinance to amend a portion of Chapter 5. He said he understood the amendment was to cure an inequitable condition that existed between properties on Rockville Pike and others in the City who had an opportunity to seek a variance for their main entry signs to allow them to be in the building restriction line. The properties on Rockville Pike did not have the same opportunity and he said that Federal Realty felt it was appropriate to enact the

main entry signs to allow them to be in the building restriction line. The properties on Rockville Pike did not have the same opportunity and Federal Realty felt it was appropriate to enact the amendment to give all property owners the same level of consideration for variance requests, place all decisions on sign variances under the jurisdiction of one board, and give the SRB the opportunity and authority to grant variances on a case-by-case basis while maintaining the overall goals of the City's regulations.

3. Ken Reichard, Owner of Lot #4, Monument Street. Regarding Item 8 on the agenda, Mr. Reichard said he had concerns about the proposed sale of property owned by the City located behind Lot #4. He said with the sale of the property there would no longer be access through the alley to his Lot or to Lot #5. He also expressed concern about the storm water runoff to the lots and how the proposed subdevelopment of town houses would impact the natural screening of his property. He asked if the Mayor and Council considered what would happen to the access through the alley way which he has maintained for 15 years. Mr. Romer said as part of the subdivision review process, the matter would go back to the Planning Commission for a detailed review of the platting process, and Mr. Reichard would have a number of forums in which to address his concerns.

4. Cynthia Malament, President, Rockville Chamber of Commerce spoke in support of the proposed amendment of Chapter 5 to expand the authority of the Sign Review Board. She said the Chamber was appreciative of the City's efforts to work with the business community and the positive attitude expressed by the City helped to maintain a solid business community, which benefitted everyone.

5. Calvin Genies, 637 Blandford Street expressed concern about some work performed by his neighbors, who cut a driveway without his permission or notification, and the City subsequently took part of his driveway apron in order to make a driveway for the neighbor to get into his property. Mr. Romer said that he and Bob Goodin had a number of conversations with Mr. Genies and the issue was that property lines did not extend into the right-of-way. The area in concern is out in the public right-of-way where there were two driveways that were very close to each other and the area where vehicles could easily turn into both driveways necessarily overlapped. However, he said the overlapping occurred in the public right of way which was not uncommon. The City brought the aprons together so that vehicles could adequately access either driveway. Mr. Genies complained that the driveway was cut against his fence and the apron installed against his fence. Mayor Coyle directed that the City Manager view the photos provided by Mr. Genies displayed and to follow up with staff on the concerns raised.

6. Helen Heneghan, 504 Mannakee Street reiterated her suggestion for renaming the Rockville Senior Center after former Councilman and Mayor, Bill Hanna, who was instrumental in opening the Senior Center and in getting the property deeded to the City.

7. Glennon Harrison, speaking as a resident and not a member of the Planning Commission, noted that Planning Commission members Susan Hoffmann and Charles Haughey joined him tonight in expressing concern about the proposed amendment to Chapter 5 which he said would relax sign standards on Rockville Pike and grant the Sign Review Board new powers to allow much larger signs than were presently permitted. He said the change was proposed by the Director of Community Development to accommodate Federal

Realty, however, it would allow every property owner on Rockville Pike to request and receive similarly larger signs and the likely result would be the proliferation of signs along the Pike. He said the signs have the potential to undermine the urban design guidelines of the Master Plan and contribute to a less safe driving environment along Rockville Pike. Mr. Harrison also suggested that the proposed amendment receive full and careful consideration by the Planning Commission and that other commissions, e.g., Traffic and Transportation and the Rockville Pike Design Review Board, might provide useful input. He also urged the Mayor and Council to hold a public hearing to solicit input from the broader community of Rockville citizens.

7. William Meyer, 804 Leverton Road thanked the City for sponsoring the recent Police Academy which he said was an informative and valuable opportunity to learn how the City police interact and react to the daily problems they face. Referring to the bid award to purchase police replacement vehicles, Mr. Meyer suggested the City consider instituting a policy to allow officers who reside in Rockville to take their police cars home; he said this would extend the life of the vehicles and give an added presence of police vehicles on the City's streets.

Re: Appointments

Compensation Commission - Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the following appointments were made to the Compensation Commission: Stephen Edwards (term expires 12/31/00); Bridget Donnell Newton (term expires 12/31/00); Virginia Onley (term expires 12/31/98); and Joseph Whalen (term expires 12/31/98). Staff is awaiting to confirm the appointment of a fifth candidate.

Economic Development Council - Upon motion of Councilmember Krasnow, duly seconded and unanimously passed, Rory Coakley was appointed to serve on the Economic Development Council.

Sign Review Board - Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, Robert Turner was reappointed to serve as the Chair of the Sign Review Board.

Re: Approval of Minutes

Upon motion of Councilmember Krasnow, duly seconded and passed, with Mayor Coyle abstaining as he was on travel that date, the Minutes of Meeting No. 30-94 (October 19, 1994) were approved as written.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the Minutes of Meeting No. 31-94 (October 24, 1994) were approved as written.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, the Minutes of Meeting No. 32-94 (November 7, 1994) were approved as written.

Re: Consent Agenda

Councilmember Weisbroth requested removal of Item A and Councilmember Krasnow requested removal of Item C. Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Consent Agenda Item B was approved:

- (B) Award of Bid #500009539A
To: Ourisman's World of Ford Sales
Of: Alexandria, VA
In the Amount of: \$114,408.00

Re: (A) Introduction of Ordinance to amend Chapter 5 of the Rockville City Code entitled "Buildings and Building Regulations" so as to amend Article II "Building Restriction Lines," Section 5-18 "Exceptions" to authorize the Sign Review Board to grant modifications from the limitations on signs within the Rockville Pike building restriction lines. The amendment will allow the Sign Review Board to grant modifications to this section as it relates to signs and supporting structures.

Councilmember Weisbroth requested removal of the item from the Consent Agenda in order for staff to provide an overview of the issue. Neal Herst, Director of Community Development explained that the issue arose because of an application filed by Federal Realty for an entrance sign monumental feature leading into their newly remodeled shopping center. In normal practice, they applied for a sign permit and when the calculations were done, it was found they exceeded the area of the height based upon the formula, and they subsequently applied for a variance. Mr. Herst said in all other instances, the Sign Review Board (SRB) was able to grant variances to the sign ordinance when hardship and need was demonstrated. The SRB approved a variance for this particular application; however, before construction began, the plans were reviewed and it was found that the Sign Review Board did not, in fact, have authority to grant variances to Chapter 5 which also dealt with sign issues. In order to facilitate not only Congressional Plaza's project, but also to provide a level of equity amongst all property owners to have a right of review and appeal

by a citizen body in the community, it was suggested that staff submit for the Mayor and Council's consideration an amendment to Chapter 5 that would allow the SRB to serve as a variance granting body for signs in Chapter 5 of the Code. Mr. Herst pointed out that a more formal review was not required by the particular ordinance.

Councilmember Marrinan asked if the omission was intentional that authority would not be extended to the SRB. Mr. Glasgow said that the last comprehensive overview of the Sign Review Ordinance took place in 1982 and he recollected that it was not an issue that came to anyone's attention at that particular time.

Councilmember Krasnow said it was clear that the drafter of Chapter 5 was very conscious that they did not want large obstructions in the 35 foot right-of-way. She said while she was in support of relaxing some of the City's sign ordinances, she was concerned about a whole scale elimination of any standard.

Councilmember Marrinan said the way the ordinance now read was that the focus would extend not only to Rockville Pike, but to Hungerford Drive, West Montgomery Avenue and Frederick Road. He said while the Council generally agreed they would have no problem extending and delegating additional responsibilities to the SRB; the scope may be beyond what had been fully analyzed, and he asked if the Mayor and Council were comfortable with the full impact.

Councilmember Dorsey noted that most discussions of the sign dimensions referred to height and width; however, there was no reference to the depth of the sign or the actual structure which would accommodate electrical and other operating mechanisms for the sign. He said he could visualize a structure that held a sign but had enough depth inside the

sign that could actually amount to being a very narrow, albeit wide and tall type of storage building. Mr. Dorsey said the Mayor and Council should visit the concept of why a set-back rationale was needed in the first place and then try to accommodate the situation without defeating the intent of the law. Mr. Herst said he agreed with Mr. Dorsey that the creativity of a property owner could be unlimited; however he said it would at the discretion of the SRB to apply standards as appropriate so as not to allow a sign to become a type of small storage building.

Councilmember Krasnow asked if technology could be applied to produce a visual concept of how larger signs closer to the main roadway would impact our senses--e.g., if they would appear too busy and be a distraction to drivers.

Councilmember Weisbroth asked staff to enlighten the Mayor and Council on the hardship issue. Mr. Herst explained that a hardship would be having to put an 8-foot high sign back 37.5 feet from the property line, causing the sign to lose a lot of its visibility and causing the loss of impact at the entrance gateway into the shopping center. The alternatives are to erect a taller sign and a larger area sign, however, to do so further back from the property line. He said there was a trade-off that had to be balanced and the Board balanced the tradeoffs of a lower sign closer to the ground but closer to the right-of-way versus a taller sign further back from the right-of-way. Councilmember Weisbroth said her concern was that once the process was opened up to allow development along West Montgomery, Rockville Pike, Hungerford Drive, and Frederick Road, the issue was what would be in the best interest of the property owner and not whether the owner could develop

a sign in a particular location that they'd have to move because they can't develop in the location spot that they should.

Councilmember Dorsey said he continued to be concerned that there not be sign clutter on Rockville streets which might disrupt vehicular movement. However, he said it was important for shopping centers with multiple businesses to be able to advertise their existence and not be inhibited by the same limitations for single businesses.

Mr. Klacik explained that Federal Realty filed for a sign variance, went before the SRB and received approval of the variance. They received a letter from the City that informed them their sign was approved and they were asked to submit the fee for the sign permit. He said they went ahead and built the signs and when their general contractor came to the City to obtain a building permit to pour the foundations, the City's Inspection Services Division had referred it for planning for review, and Planning noticed the discrepancy with the jurisdiction of the Sign Review Board. He said the goal was to have the signs in place for the Grand Opening which took place on November 17th. He also said that signage was important to many retailers in Congressional Plaza who were drawing shoppers from other areas outside of Rockville.

Councilmember Weisbroth said that the implications needed to be understood: does an applicant not have the right of appeal, and should there an allowed right of appeal for issues of health and safety, and aesthetics.

The Mayor and Council agreed that additional information was needed; staff was instructed to follow up on the issues raised, and once answers were obtained and input received from the various commissions, to bring the Ordinance back for adoption in early

1995. The Mayor and Council also identified the following additional questions to be answered:

- Should there should be a right to appeal a sign in the set back zones of West Montgomery, Rockville Pike, Hungerford Drive, and Frederick Road?
- What is the definition of a hardship and how are decisions regarding hardship cases made?
- What are the implications for potential impact on all major streets?

Staff was also asked to provide a description of the Sign Review Board's original charge; staff was also asked to refer the proposed amendment to the Planning Commission, Traffic and Transportation, Economic Development Council, the Rockville Pike Architectural Committee and the Chamber of Commerce for their review and input.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the Ordinance was introduced.

Re: (C) Receipt of financial reports summarizing the results of City operations for the period from July 1, 1994, through October 31, 1994.

Councilmember Krasnow requested removal of Item C from the Consent Agenda in order to comment on the recent bankruptcy filed by Orange County, California due to investments they made which were deemed to be unsafe. She asked whether there would be any affect on the City of Rockville. Kevin Deckard, Director of Finance responded that the City had no derivatives or investments that would place the City's principal in jeopardy. He said only a small percentage of local governments around the country take the

type of risks taken in Orange County. Mr. Deckard also said there would be some question as to how the supply/demand curve for municipal bonds and other investment products in the country would be impacted. Mayor Coyle added that the City had a set of policies in place for how it invested and managed its portfolio and finances; he said that the policy afforded some protection to the fiscal stability of the community.

Councilmember Marrinan noted the financial reports reported that real estate property taxes levied in July were down nine-tenths of a percent from last year, and the revenue coming to the City would be less this year than last year. He said that this would present an interesting challenge in developing the Fiscal Year 1996 budget.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, the financial reports summarizing the results of City operations for the period from July 1, 1994, through October 31, 1994 were received.

Re; Adoption of Ordinance to Levy Special Assessments for Driveway Aprons constructed in Fiscal Years 1994 and 1995. The City performed 36 driveway apron jobs requested by the residents. The assessable cost is \$27,429.45.

Ordinance No. 20-94

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Ordinance No. 20-94, a copy of which can be found in Ordinance Book No. 18 of the Mayor and Council, was adopted.

Re: Approval of "Offer of Agreement" to sell land to R.A.M. Investing, Ltd.

The attached "Offer of Agreement" was negotiated with Ralph F. DeSena, President of R.A.M. Investing, Ltd. for the possible sale of City owned property located on Maryland Avenue.

Mr. Romer explained that the property had been in the City's inventory for some time. Through the efforts of Councilmember Marrinan, discussions were begun with the President of R.A.M. Real Estate Specialist Bernie Fitzgerald said 1.23 acre of land was purchased by the City in 1965 for \$14,000 and was originally intended for use as a water tank. It was never put to that use and the property sat and was allowed to grow in its natural state, receiving little maintenance from the City over the years. Earlier in 1994, the City received an offer from Mr. Ralph DeSena to purchase the property who proposed to assemble the 1.23 acres with his adjacent half acre site for the purpose of developing a five lot subdivision. After administrative review by staff, it was concluded that the City did not need to retain the site for any known public purpose and the best use of the property was assemblage with other sites to create a more efficient use of the property. Mr. Fitzgerald described the property and some of the other nearby area properties developed by R.A.M. Mr. Fitzgerald explained that the sale price was \$130,000; the City had a deposit of \$5,000 which will be made by the contractor purchaser upon the acceptance of the agreement. The City will make no acknowledgement that the property can be used for any purpose; the normal subdivision process would be taken in order to have the lots created. Settlement also had to occur within 30 days of the final subdivision approval but no later than 7 months from

the date of the Agreement. Mr. DeSena will also have the option of assembling a third parcel to possibly develop a nine lot subdivision.

Mr. Fitzgerald said that staff had made notification of the proposed sale to the public by placing an advertisement in the November 16, 1994 Rockville Gazette, and on 11/16/94, a letter was mailed to 179 residents and community associations located in close proximity to the property. Mr. Fitzgerald said he had spoken to approximately eight residents, including Mr. Reichard. Mr. Fitzgerald said that staff felt that Mr. DeSena's offer was good and they were recommending approval.

City Attorney Paul Glasgow explained how an exception was made when there were larger houses on the lot than might normally otherwise be cited. He said if the Offer of Agreement was approved this evening, there would be a binding agreement between the City and R.A.M. and there were contingencies regarding assemblage and subdivision which had to be achieved by July 15, 1995. If this was not achieved and the purchaser diligently pursued those efforts, the City could either grant a further extension or terminate the contract. If the purchaser did not diligently pursue assemblage of the subdivision, the City could forfeit the deposit.

Ralph DeSena, President of R.A.M. Investing, Ltd, 350 Hungerford Court introduced the architect and the civil engineer who were also present. He said he was excited about the opportunity to do a project in Rockville. He had hoped to arrive at the point where the Mayor and Council would recognize that R.A.M. obtained an appraisal at their own expense, and had gotten a fair price; they also hoped approval would be given for the Offer of Agreement. There was no intention to circumvent the established preliminary

subdivision procedures, citizen input and other processes that were necessary for the project. He said what he heard tonight could have a impact on the desirability of the project. Mr. DeSena also said they had anticipated that the issues would be addressed in a public forum. He said he was not in a position to say that it would be amenable to R.A.M. to modify their agreement to allow for preservation of the alley; nor was he in a position to say that the issue would eliminate the possibility of R.A.M. being able to complete the deal. He explained that the plan was, in fact, a concept and he shared with the Mayor and Council some drawings of the exterior renderings and the type of houses they were hoping to develop. He stated that no architectural work had been done to develop the houses as they were waiting for an agreement to be in place with the City. He also displayed a site plan suggesting the way the lots could look.

The Mayor and Council noted the issues and concerns raised by earlier speakers and reached consensus that the following needed to be addressed before the Offer of Agreement could be approved:

- Could a conveyance be put into place to preserve the access to Lots 4 and 5?
- If the Mayor and Council wanted to continue access to Lots 4 and 5, Mr. DeSena would have to look at his development and the City would have to determine how a private easement would be constructed to continue access to the lots. How would this impact the development plans and how would it impact the purchase price?

Mr. DeSena explained that access to Lots 4 and 5 was an issue that would require additional studies and expenses. Mr. Glasgow explained that through the agreement,

a permanent easement would have to be created for those property owners so they will always be able to gain access through the alley while the property was in the City's ownership. Once the City signed the agreement, it could not require that Mr. DeSena provide access to another private party. Mr. Glasgow said the exact legal title of the alley must also be determined.

Councilmember Krasnow moved postponement of the approval of Offer of Agreement until the Council's next General Session in order to allow staff to resolve the questions can be resolved by staff.

Susan Hoffmann, Owner of Lot #5 acknowledged that her property line and the alley way did overlap and she said when she purchased the property in 1988, the survey included the small piece of alley as her property.

Re: Discussion and Instructions to Staff - Application to Close and Abandon Public Way SCA94-0069, Mayor and Council of Rockville, Applicant.

To close and abandon a portion of E. Jefferson Street between Richard Montgomery Drive and Mount Vernon Place.

Re: Discussion and Instructions to Staff - Regarding a conveyance of land to the Montgomery County Board of Education.

The office of the City Attorney has prepared a deed to transfer title to a trust of land known as Parcel B, Block 9, "Hungerford" located in the vicinity of Richard Montgomery High School.

Mr. Romer explained that the abandonment was initiated by the City in order to accomplish the long planned extension of Fleet Street in a new alignment to ultimately connect with the new section of Wootton Parkway. The abandonment would also facilitate the development of the Marlo Furniture Store and Richard Montgomery High School's goal which envisioned the abandonment as an opportunity to enhance their holdings and reconfigure the parking lot to better serve the high school. Mr. Romer said that staff and the Planning Commission recommended the abandonment and were looking for the Mayor and Council's favorable direction.

Councilmember Marrinan noted that the School Board was very cooperative in deeding the City 11,121 square feet in order for the City to accomplish the reconstruction of Fleet Street.

Councilmember Krasnow asked if the City would install a sidewalk on Mount Vernon Place where the right-of-way currently existed. Mr. Romer confirmed that a sidewalk would be installed. Ms. Krasnow asked if the City had looked at the traffic patterns and she asked when the completion of the other portion of Fleet Street would take place. Mr. Romer said the issue would be dealt with in the Fiscal Year 1996 budget. Mrs. Krasnow said that while she supported the abandonment, she questioned whether it should wait since the new Fleet Street would not yet continue to its proposed destination of Wootton

Parkway. She said she hoped the City was not creating a new traffic problem in the interim. Staff was asked to monitor the situation and if the result was increased traffic onto East Jefferson, the City might have to install "No Right Turn" signage in order to protect the neighborhood. Mr. Romer acknowledged that the issue was factored into staff's thinking and the goal was to have the second phase of the road under construction before any problems became apparent.

Without objection, staff was directed to proceed with an abandonment ordinance and preparation of the deed of transfer to Montgomery County.

Re: FYI/Correspondence

1. Councilmember Dorsey noted that the City of Takoma Park had been designated by the State as one of the top ten most livable cities in the State.
2. Councilmember Weisbroth commented that the Rockville Chamber of Commerce's Excellence in Landscaping Award looked wonderful and she said it was nice to see the program develop so quickly. She asked staff to provide some follow up on how many actual combined office and retail centers existed, because there might not be a need for as many award categories.
2. Councilmember Marrinan noted that the County Executive's Office announced his appointment to serve on the County Detention Site Selection Committee. Mr. Marrinan said he would serve as the Maryland Municipal League and the City of Rockville's representative, and he was looking forward to getting the issue settled.
3. Mr. Marrinan noted that he attended a meeting on December 10, 1994 of the Courthouse Square Park Sculpture Nomination Committee. He said that five artists were

chosen from 183 local, national and international submissions, to submit designs for the new fountain and sculpture in Courthouse Square. Mr. Marrinan remarked that he was impressed by the level of discussion and involvement and he commended the volunteer Committee which was comprised of Charles Goldstein, Ken Lechter, John Moser, Alice Kelly, Paul Shields, Patrick Woodrick, Bill Hanna, three architect consultants, and the City's Art Consultant Francoise Yohalem.

Re: New Business

1. Mayor Coyle announced that the Glenview Mansion was open for the public to view the holiday decorations representing the different cultures.

3. Historical Society Archaeological Dig - Mayor Coyle said the City was asked by the Montgomery County Historical Society to consider making a contribution towards an archaeological dig at the site of the Bealle-Dawson house. They found what appeared to be an underground ice cellar and the expenses associated with the dig and placing the house in another location were \$10,000. The City was asked to make a contribution towards the effort. Councilmember Krasnow noted that the City actually owned the site and she said it was only appropriate that they make a contribution towards the effort. Upon motion of Councilmember Krasnow, duly seconded and unanimously passed, the Mayor and Council approved a motion to contribute \$2,000 from the Targets of Opportunity fund to the Montgomery County Historical Society as a contribution to their archeology dig.

Re: Next Meeting

The Mayor and Council will meet with the Planning Commission and the Board of Appeals in a Worksession on Monday, December 19, 1994, at 7:30 p.m. The Mayor and Council will also meet in worksession with the Recreation and Park Advisory Board on January 3, 1995.

Re: Adjournment

There being no further business to come before the Mayor and Council, the General Session was adjourned at 10:30 p.m. to reconvene in General Session on January 9, 1995, or at the call of the Mayor.